

REMARKS

As a preliminary matter, the undersigned wishes to thank Examiner Fay and Examiner Low for taking the time to discuss the outstanding rejections during the interview on August 16, 2004.

As discussed at the interview, there is no basis for rejection of the pending claims under 35 U.S.C. §102 in view of the Hubbard reference. Each of claims 15 and 89-95 is directed to methods in which administration of a dosage form comprising methylphenidate results in an *ascending* methylphenidate release rate. Although the outstanding Office Action contends that such a method is taught by the Hubbard reference's disclosure relating to "Patient Profile 2," it is undisputed that the data associated with Patient Profile 2 corresponds to a *descending* methylphenidate release rate (*see, e.g.*, Supplemental Declaration of Suneel K. Gupta, ¶4). Because such disclosure represents the antithesis of anticipation, the rejection under §102 is improper and should be withdrawn.

Claims 15 and 88-95 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over certain claims of Application Serial No. 09/802,709. Applicants note, however, that claim 88 is not currently pending. Moreover, there has been no showing that those of ordinary skill in the art would have found claims 15 and 89-95 to have been obvious in view of the claims of Application Serial No. 09/802,709. Nonetheless, Applicants submit herewith the requested terminal disclaimer, but do so solely in an attempt to advance prosecution of this patent application. Applicants' submission of the terminal disclaimer does not constitute, and should not be construed to constitute, an acknowledgment of obviousness or any other substantive relationship among the involved patent claims.

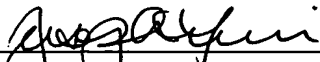
The outstanding Office Action requests that Applicants provide copies of certain prosecution documents. As noted in the Interview Summary, the undersigned has already given Examiner Fay copies of these documents. Accordingly, Applicants renew their request: (1) for an initialed copy of the Form 1449 that they mailed to the PTO on January 4, 2000; (2) an initialed copy of the Forms 1449 that they mailed to the PTO on April 23, 2003; and (3) an initialed copy of the Form 1449 that they mailed to the PTO on March 23, 2004.

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PATENT

In view of the foregoing, Applicants submit that the pending claims are in condition for ready allowance, and therefore respectfully request an early indication of allowability.

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